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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/749,144

12/27/2000

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3764.P142

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08/10/2006

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EXAMINER

BENTON, JASON

ART UNIT

PAPER NUMBER

3747

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-6, 8, 24, 36 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Duffy.

The patent by Duffy (6,048,332) shows the method of delivering an arteriogenic factor to a vessel region in a medically effective manner to structurally enlarge an existing blood vessel.

It is the opinion of the examiner that the delivery of an arteriogenic factor to a vessel region would result in the arteriogenic factor being supplied to the primary vessel and any bypass vessel in the region.

The vessel region is injured.

A needle catheter or a balloon catheter is provided to accommodate the arteriogenic factor. The arteriogenic factor is advanced from the needle catheter or the balloon catheter to the vessel region.

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 33, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy.

The patent by Duffy (6,048,332) does not specify the delivery timing of the arteriogenic factor. It is the view of the examiner that the length of delivery duration and the timing of delivery is an obvious choice of design dependant on the type of arteriogenic factor being delivered to the blood vessel region.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy.

The patent by Duffy (6,048,332) does not specify the temperature of the catheter. It is the view of the examiner that the temperature of the catheter is an obvious choice of design dependant on the type of arteriogenic factor being delivered to the blood vessel region.

Claims 4 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy.

The patent by Duffy (6,048,332) does not specify that the arteriogenic factor can be delivered with a syringe. It is the view of the examiner that the method of delivery of the factor, whether it is a syringe or catheter is an obvious choice of design. Both

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methods of delivery are well known in the art and no new or unexpected results are achieved by delivering the arteriogenic factor with a syringe rather than a catheter.

### ***Response to Arguments***

Applicant's arguments filed 5/30/06 have been fully considered but they are not persuasive. It is argued that the patent by Duffy does not show the vessel region being injured then enlarged. It is the view of the examiner that the delivery of the arteriogenic factor would inherently damage the vessel region, even if only minimally. There is also the likelihood that the vessel region was injured previously, hence the need of the arteriogenic factor of Duffy.

It is further the view of the examiner that upon delivery of the arteriogenic factor to the vessel region, it is inherent that some of the factor would be absorbed into bypass vessels in the region. The patent by Duffy therefor shows the same structure as is claimed, and should be expected to achieve the same results.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Benton whose telephone number is (571) 272-4838. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on (571) 272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JB



STEPHEN K. CRONIN  
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